

EASTHAM WETLANDS BYLAW

Section 1. PURPOSE

The purpose of this Bylaw is to protect the foreshores and wetlands of the Town of Eastham by controlling activities deemed to have a significant effect on wetland values including, but not limited to, the following: public or private water supply, ground water, flood control, erosion control, storm damage, water pollution, fisheries, shellfish, wildlife and recreation.

Section 2. APPLICABILITY

No person shall remove, fill, dredge, alter or build upon or within 100 feet of any bank, fresh water swamp, certified vernal pool, or seasonal wetland, beach, dune, estuary, creek, pond or lake; or within 200 feet of any river, stream; or upon any land under said waters or upon or within 100 feet of any land subject to tidal action, coastal storm flowage, or flooding or any land designated by the Commonwealth or federal government as an Area of Critical Environmental Concern and/or wildlife refuge, other than in the course of maintaining, repairing, or replacing, but not substantially changing or enlarging, an existing and lawfully located structure or facility used in the service of the public and used to provide electric, gas, water, telephone, or telecommunications services, without first filing written notices of his intention to so remove, fill, dredge, alter, or build upon, by sending a separate letter by certified mail to the Eastham Conservation Commission and without receiving and complying with an Order of Conditions and provided all appeal periods have elapsed. Such Notice of Intent shall include such plans as may be necessary to describe such proposed activity and its effects on the environment. The same plans and specifications required to be filed by an applicant under Massachusetts G.L. c. 131, § 40, will be accepted as fulfilling the requirements of this Bylaw. Said Commission may hear any oral presentation under this Bylaw at the same public hearing required to be held under the Provisions of said Ch. 131, § 40 of the Massachusetts General Laws.

Unless otherwise provided herein, definitions set forth in said chapter and section and in the regulations issued and as may be amended by the D.E.P. or any successor thereto, are hereby made a part of this Bylaw.

Lands within 200 feet of rivers are designated Riverfront Areas. Riverfront Areas and buffer zones, which are lands within 100 feet of other resource areas, are presumed to be significant to protect the private or public water supply, to protect the groundwater, to provide flood control, to prevent pollution, to protect wildlife habitat, and to protect fisheries and shell fisheries. Such lands are so presumed because it has been observed that activities undertaken in close proximity to resource areas have a high likelihood of adverse impact on these resources, either immediately, or as a consequence of construction, or over time, as a consequence of maintenance or operation of the activities or structures. Such adverse impacts from construction and use are presumed to include, without limitation, erosion, siltation, loss of groundwater

recharge, impairment of water quality, and/or loss of wildlife habitat. This presumption is refutable, and may be overcome by a clear showing by a preponderance of the evidence that the riverfront or buffer zones do not play a role in the protection of any one of these interests. The Commission therefore may require that the applicant maintain a strip of continuous, undisturbed vegetative cover within this area, unless the applicant demonstrates to the satisfaction of the Commission that the area or part of it may be disturbed without harm to the values protected by the Bylaw.

No permit shall be issued for any activity in the buffer zone, unless the applicant, in addition to meeting the otherwise applicable requirements of this Bylaw, has proved by a preponderance of the evidence that:

- 1) there is no technically demonstrated feasible alternative to the project with less adverse effects; and
- 2) that such activities, including proposed mitigation measures, will have no significant adverse impact on the areas or values protected by this Bylaw.

As to projects within the riverfront areas of buffer zones, the closer an activity is proposed to a resource area, the more scrutiny will be given to the potential impacts of a proposed project.

Any activity proposed or undertaken outside of the resource areas protected by this Bylaw, as specified above, shall not be subject to jurisdiction of the Conservation Commission unless in the judgment of the Conservation Commission, said activity is likely to result in or has resulted in the alteration of a resource area protected by this Bylaw.

Section 3. The term "person" as used in the Bylaw, shall include any individual, group of individuals, association, partnership, corporation, company, business, organization, trust, estate, administrative agency, public or quasi-public corporation or body, or any other legal entity or its legal representatives, agents or assigns.

Section 4. Any person may apply to the Conservation Commission for a determination as to whether or not this Bylaw applies to a specific situation prior to the filing of a written Notice of Intent. The Commission shall make such determination under the provisions hereof within twenty-one, (21) days of the receipt of a written request sent by certified mail from any person desiring such determination.

Section 5. The Conservation Commission may impose, as part of any Determination or Order of Conditions, any conditions which it deems necessary to contribute to the protection and preservation of the subject land and the furtherance of the purposes of this bylaw stated above. Request for determination or a notice of intent may be made in the same manner and using the same forms as for applications pursuant to Massachusetts General Laws, Chapter 131, Section 40. The Commission may combine the hearing under the Bylaw and MGL Chapter 131, Section 40, into one proceeding.

Section 6. The Conservation Commission is empowered to deny permission for any dredging, filling, or altering of subject lands within the Town, if in its judgement such denial is necessary to preserve the environmental quality of the land and resources subject to this bylaw. Due consideration shall be given to possible effects of the proposal on all values to be protected under this Bylaw and to any demonstrated hardship on the petitioner by reason of denial, as brought forth at the public hearing. Any Order of Conditions or denial issued under this Bylaw shall be considered a "prior local permit" under Massachusetts G.L., c. 131, §40.

Section 7. The notice required by the first Paragraph of this Bylaw shall not apply to emergency projects necessary for the protection of the health or safety of the citizens of Eastham and to be performed or ordered to be performed by an administrative agency of the Commonwealth or by the Town. Emergency projects shall mean any projects certified to be an emergency by the Commissioner of the Department of Environmental Protection and the Conservation Commission if this Bylaw and Massachusetts General Laws, Chapter 131, Section 40 are both applicable, or by the Conservation Commission, if only this Bylaw is applicable. In no case shall any removal, filling, dredging or alteration authorized by such certification extend beyond the time necessary to abate the emergency.

Section 8. Appeal from any action of the Commission under this Bylaw shall be made to the Superior Court within sixty (60) days of the date of issuance of said Order or denial. Appeal shall be perfected by filing a Complaint within the above period and by sending a copy thereof, by certified mail, return receipt requested, to the Town Clerk and the Conservation Commission of the Town of Eastham, and if the Appellant is other than the Petitioner, to the Petitioner.

Section 9. The Eastham Conservation Commission may, from time to time, adopt such definitions, regulations and performance standards, as they may deem necessary to protect the interests of this Bylaw. Said regulations shall become effective upon publication following a public hearing in accordance with procedures in Section 11 of this Bylaw.

Section 10. The Commission, its agents, officers, and employees shall have the authority to enter upon privately owned land for the purpose of performing their duties under this Bylaw and may make or cause to be made such examinations, surveys or samplings as the Commission deems necessary.

The Commission, its agents, officers, and employees and any police officer of the Town of Eastham shall have authority to enforce this Bylaw, its Regulations and Orders of the Commission issued thereunder.

In addition to criminal prosecution, or civil enforcement, the Commission may elect to

utilize the non-criminal disposition procedure set forth in M.G.L. c. 40, Section 21D. Any person, who violates any provision of the Bylaw, Regulations, or any Orders issued thereunder, shall be punished by a fine of up to \$300.00 for each offense. Each day or portion thereof during which a violation occurs shall constitute a separate offense of each provision of the Bylaw. When enforced pursuant to the non-criminal disposition provisions of M.G.L. c. 40, Section 21D, the penalties shall be as follows:

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| First Offense: | \$100 |
| Second Offense: | \$200 |
| Third Offense | \$300 |

Section 11. The Commission may promulgate regulations, after a public hearing following public notice in a newspaper of general circulation in the Town of Eastham, not less than 21 days prior to the hearing.

Section 12. New docks and piers may be permitted only if said dock or pier or its construction will not impinge on any navigable channel and will not interfere with any form of navigation, fishing (including shellfishing and aquaculture) and/or historical shellfish resources or shellfish habitat as determined by survey, historical record, or other designation by the Shellfish Constable or Massachusetts Division of Marine Fisheries. New docks and reconstructed portions of existing docks shall be constructed entirely of materials that do not contain toxic materials, including but not limited to chromated copper arsenate.

New docks or piers shall be constructed so as to not adversely affect upland vegetation in the vicinity of the proposed structure. It shall be a condition of any order of conditions for a new dock or pier, or for any permit to authorize a previously unlicensed dock or pier, that the applicant obtain all applicable state and federal licenses. Further, the Conservation Commission shall require that applicant demonstrate that there exists no other reasonable alternative to the proposed design or location of any dock or pier, in that the dock or pier has been located so as to maximize the possibility of shared use

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